

sectors of society, highlighting the important role of family, community, peers, and government attention, will help in building the best responses towards children who are at risk and are in conflict with the law.

Defining Women in Family Law

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I. INTRODUCTION

Laws play an important role in social organization and transformation. More than being mere reflections of societal norms, they serve as catalysts for change, thereby setting new standards and paradigms to achieve a more egalitarian social order. Laws existing within the society, however, do not

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evolve only in response to domestic conditions; rather their creation is also necessitated by a broader international regime that demands conformity, if not compliance, with international or treaty law obligations. Thus, laws also reflect emerging norms which have surfaced as international standards for human behavior. This character of domestic laws allows it to attain a wider concept of rights and obligations.

One of the standard-setting instruments in the field of human rights that create state obligations is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹ The CEDAW, which was ratified by the Philippines on 5 August 1981 and entered into force for the country on 4 September 1981, impresses the need for recognition of the link between women's rights and human rights. It emphasizes that the concept of fundamental human rights includes rights accorded to both men and women that should be enjoyed by women as much as they are enjoyed by men. Essentially, it espouses the giving of equal access and opportunities to women, enabling them to be in a position and capacity to exercise their human rights in the same way that men are able to exercise them. The Convention is a concrete action against the discriminatory practices that impede the participation of women in all aspects of life on an equal basis with men.

The CEDAW Committee which is the body in charge with giving an authoritative interpretation of the Convention's provisions through the issuance of General Recommendations, has focused on the issue of equality in marriage and family relations in General Recommendation (GR) No. 21. This is in recognition of the fact that much of the human rights violations against women occur within the confines of the home and in the area of family relations which has been considered for so long as a matter of "private" rather than "public" concern upon which the State should not interfere. This is also one of the distinctive features of the Convention. It pays particular attention to concerns that are very specific to women and to the different forms by which they are subjected to discrimination.

For instance, while it is true that in both the International Covenant on Civil and Political Rights (ICCPR)² and the International Covenant on

1. The Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], Preamble, Dec. 18, 1979, 1249 U.N.T.S. 513, 19 I.L.M. 33 (1981).
2. International Covenant on Civil and Political Rights [ICCPR], Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) S.Exec.Doc.E, 95-2 (1978).

Economic, Social and Cultural Rights (ICESCR)³ which preceded CEDAW, basic human rights have already been articulated, the particularities of some of these rights were not defined; yet their non-observance clearly results in violation of rights that especially affect women. Thus, article 23 of the ICCPR guarantees the "right of men and women of marriageable age to marry and to found a family" and to be married only with "free and full consent of the intending spouses."⁴ It did not deal, however, with the consequence of women losing their nationality or citizenship upon their marriage to foreigners. Similarly, article 24 guarantees the right of every child "to acquire a nationality"⁵ but was silent as to whose nationality should be followed by the child.

CEDAW, for its part enjoins State Parties to "ensure ... that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband;" and that they shall "grant women equal rights with men with respect to the nationality of their children."⁶

Similarly, article 7 of the ICESCR guarantees for women "fair wages and equal remuneration for work of equal value" and "conditions of work not inferior to those enjoyed by men, with equal pay for equal work". It further provides for "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."⁷

CEDAW goes beyond these guarantees and mandates in article 11 that State Parties prohibit dismissals in work on grounds of being married or pregnant; and "[t]o introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances."⁸

The treaty also mandates State Parties "[t]o modify the social and cultural patterns of conduct of men and women, ... which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles

3. International Covenant on Economic, Social and Cultural Rights [ICESCR], Dec. 16, 1966, 993 U.N.T.S. 3; 6 I.L.M. 368 (1967); S.Exec.Doc.D, 95-2 (1978).
4. ICCPR, art. 23.
5. *Id.* art. 24.
6. CEDAW, art. 9.
7. ICESCR, art. 7.
8. CEDAW, art. 11.

for men and women.⁹ One of the means by which the treaty sees this as fulfilled is by amending the laws or enacting legislation that would correct practices that have discriminated against women and which, unfortunately, have been entrenched and have found support in the existing legal regime.¹⁰

This Article examines some of the more significant changes in the Family Code of the Philippines that have tried to improve the status of women within the family from the Old Civil Code (Civil Code). Other laws will be mentioned briefly in support of arguments as regards some provisions of the Family Code that either perpetuate the unequal status of women and men, or promote equality between them.

As stated earlier, GR No. 21 centers on marriage and family relations. The salient features of this instrument will be discussed as they bear significance to the changes that have evolved in our own family relations law.

II. FAMILY RELATIONS LAW: THE OLD (CIVIL CODE) AND THE NEW (FAMILY CODE)

The need for the law to address the changes and developments in social conditions in view of ensuring equality between men and women may be gleaned from the introductory provisions of the Family Code.

WHEREAS, experience under said Code as well as *pervasive changes and developments* have necessitated revision of its provisions on marriage and family relations to bring them closer to Filipino customs, values and ideals and *reflect contemporary trends and conditions*;

WHEREAS, there is a need to implement policies embodied in the new Constitution that strengthen marriage and the family as basic social institutions and ensure equality between men and women.¹¹

The Family Code undertook to recognize and protect women's rights by appropriate amendments of its provisions. Although it has not specifically mentioned that the country's compliance with the state obligations in the CEDAW is one of the reasons for the changes in the law, the government continues to update the CEDAW Committee on the changes in the Family Code and other laws to describe the extent by which the Philippines has complied with its treaty obligations.

9. *Id.* art. 5.

10. *Id.* art. 2 (f).

11. The Family Code of the Philippines, Executive Order No. 209 [FAMILY CODE], Whereas Clauses (1988) (emphasis supplied).

A. Age and Status

From the old law which effects emancipation by marriage, the Family Code has done away with the proviso on emancipation by way of marriage of a minor. Minors, whether male or female, are not allowed to marry, and the marrying age has been set at 18 when both men and women are no longer deemed "children" in the eyes of the law. Hence, the former allowable ages for men and women to marry, set at 16 and 14 respectively, which was obviously based on biological "readiness" for bearing children, has been abandoned.

B. Marriage and Remarriage

Following the dictum that maternity is always certain but paternity is not, the Family Code presently allows a widow to remarry within 300 days following the termination of her first marriage, but the paternity of the child she is carrying is subject to article 168,¹² departing from the old law which provided for an outright prohibition to remarry within 300 days by denying a pregnant widow the issuance of a marriage license which is a formal requirement to contract a valid marriage, until after said 300 days following the death of her husband, unless in the meantime she has given birth to a child.¹³ As a matter of fact, the corollary provision in support of this old rule found in the Revised Penal Code, is still in force. Thus, article 351 of the Revised Penal Code provides:

Premature marriages. — Any widow who shall marry within three hundred and one day from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death, shall be punished by *arresto mayor* and a fine not exceeding 500 pesos.

12. FAMILY CODE, art. 168.

If the marriage is terminated and the mother contracted another marriage within 300 days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:

- (1) A child born before 180 days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within 300 days after the termination of the former marriage;
- (2) A child born after 180 days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within 300 days after the termination of the former marriage.

13. An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386 [CIVIL CODE], art. 259 (1950).

The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one day after the legal separation.¹⁴

C. Separation and Annulment

Under the Family Code, aside from the fact that there are now additional grounds for legal separation¹⁵ thereby allowing a person to have recourse with the law under such circumstances, the previous grounds of adultery of the wife and the concubinage of the husband have been changed to sexual infidelity or perversion.¹⁶ This removes the undue advantage that men had brought about by the fact that it is generally more difficult to prove concubinage than adultery, because there are more elements required to be present for this crime to be committed.

As far as annulment is concerned, the old provision on fraud was carried over in article 45 of the Family Code which states that fraud committed by one spouse at the time of the marriage is a ground for annulment.¹⁷ Article

14. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 351 (1930).

15. FAMILY CODE, art. 55.

16. *Id.* art. 55 (8); CIVIL CODE, art. 97 (1).

17. *Id.* art. 45. The article provides that a marriage may be annulled for any of the following causes, existing at the time of the marriage:

- (1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;
- (2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;
- (3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
- (4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited as husband and wife;

46 provides as one form of fraud the concealment of the woman that she was pregnant with another man's child at the time of her marriage.¹⁸ As with all the other grounds in said article,¹⁹ the common underlying determinant of fraud is concealment of matters deemed important under the law that should have been known to the other contracting party before he or she decides to enter into marriage. However, in this particular ground, only the concealment of the woman of her pregnancy gives rise to fraud and not the concealment of the man of the fact that he has impregnated someone else at the time of the marriage. The woman is not given the chance to opt out of the marriage even though the betrayal of trust involved could very well change her mind about marrying her intended husband. Obviously, it is no longer the question of concealment, which has assumed importance here but paternity.

D. Names and Surnames

The existing provision on the use of "Junior" (or Jr.) as an appendage when someone bears an identical name with the parent remains the privilege between fathers and sons.²⁰ This has not been changed either by the Family

- (5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or
- (6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

18. *Id.* art. 46.

19. *Id.* Any of the following circumstances shall constitute fraud referred to in number 3 of the preceding article:

- (1) Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;
- (2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
- (3) Concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or
- (4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

20. CIVIL CODE, art. 375 (providing that in case of identity of names and surnames between ascendants and descendants, the word "Junior" can be used only by a son).

Code or any jurisprudence on the matter. The applicable provision on the use of surnames is still the Civil Code where it provides:

Art. 370. A married woman may use:

- (1) Her maiden first name and surname and add her husband's surname, or
- (2) Her maiden first name and her husband's surname or
- (3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."²¹

Given the subordinated status of the woman as wife in the old law, the logical interpretation of the above provision is that the choice of the wife in using a surname is confined to the three options provided by law. However, in *Yasin v. Judge Shari'a District Court*,²² the permissive nature of the use of the husband's surname was clarified. In this case the Supreme Court ruled that:

[e]ven under the Civil Code, the use of the husband's surname during the marriage (art. 370, Civil Code), after annulment of the marriage (art. 371, Civil Code) and after the death of the husband (art. 373, Civil Code) is permissive and not obligatory except in case of legal separation (art. 372, Civil Code).²³

In her concurring opinion, Justice Romero intimated that the state policy which recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men²⁴ signifies that women, no less than men, shall enjoy the same rights accorded by law and this includes the freedom of choice in the use of names upon marriage.²⁵

In allowing an illegitimate child who was subsequently adopted to bear the surname of the father or mother, the Supreme Court held in *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, Honorato B. Catindig*²⁶ that an adopted child is also entitled to all the rights of a legitimate child including the right to bear the surname of the parents such that, in this case,

21. CIVIL CODE, art. 370.

22. *Yasin v. Judge Shari'a District Court*, 241 SCRA 606 (1995).

23. *Id.* at 611.

24. *Id.* at 615 (Romero, J., concurring) (citing PHIL. CONST. art II, § 14) (emphasis supplied).

25. *Id.* at 615-16 (Romero, J., concurring).

26. *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*, 454 SCRA 541 (2005).

the petitioner's continued use of the surname of her mother maintained her maternal lineage.

Being a legitimate child by virtue of her adoption, Stephanie is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother. This is consistent with the intention of the members of the Civil Code and Family Law Committees. In fact, it is a Filipino custom that the initial or surname of the mother should immediately precede the surname of the father.

Additionally, as aptly stated by both parties, Stephanie's continued use of her mother's surname (Garcia) as her middle name will maintain her maternal lineage.²⁷

As far as illegitimate children are concerned, Republic Act No. 9255²⁸ amended article 176 of the Family Code, and allowed illegitimate children to use the surname of the father with a requirement of proof of filiation.

Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action ... to prove non-filiation during his lifetime ...²⁹

E. Parental Authority

Notwithstanding the aforesaid provision of the law that allows the illegitimate child to use the surname of the father upon the latter's recognition, the fact remains that said recognition does not automatically confer custody to the father. The Supreme Court in *David v. Court of Appeals*³⁰ held:

[t]he recognition of an illegitimate child by the father could be a ground for ordering the latter to give support to, but not custody of, the child. The

27. *Id.* at 552 (emphasis supplied).

28. An Act Allowing Illegitimate Children to Use the Surname of their Father, Amending for the Purpose Article 176 of Executive Order No. 209, otherwise known as the Family Code of the Philippines, Republic Act No. 9255 (2004).

29. *Id.* § 1 (emphasis supplied).

30. *David v. Court of Appeals*, 250 SCRA 82 (1995).

law explicitly confers to the mother sole parental authority over an illegitimate child ...³¹

It follows that only if she defaults can the father assume custody and authority over the minor. Of course, the putative father may adopt his own illegitimate child; in such a case, the child shall be considered a legitimate child of the adoptive parent.

Whether or not it is good law to totally deprive the father of parental authority and the corresponding responsibility of caring and rearing for his illegitimate child is subject to debate. As a matter of fact, under article 16 (d) of the CEDAW, the Philippines as a State Party is obliged to take all measures to ensure that parents, whether married or not, have the "same rights and responsibilities as parents."³² This is further elaborated in GR No. 21 stating that "[t]he shared rights and responsibilities enunciated in the Convention should be enforced at law" and that "States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children."³³ The Recommendation further points out that the responsibilities placed upon women to bear and raise children affect their access to education, work, and other activities for their personal development.

It seems, therefore, that the strict rule that parental authority in cases of illegitimate children shall reside with the mother can produce adverse effects on the father, who under the law is divested of the responsibility for caring for and rearing said children³⁴ while he is expected to support them. At the same time, this rule could also place an undue burden on the mother, since she is the sole bearer of the duties that legally flows from the exercise of parental authority. This becomes especially difficult if one considers that some single working mothers are usually excluded from availing of social, medical and/or educational benefits for dependents just because their children happen to be illegitimate. If the law places upon them the exclusive exercise of parental authority (absent any proof of unfitness), then at least

31. *Id.* at 86 (emphasis supplied).

32. CEDAW, art. 16 (d).

33. *Id.* GR No. 21.

34. FAMILY CODE, art. 209.

Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

they should be spared from the discriminatory laws or policies especially on benefits that pertain to their "illegitimate" dependents.

As regards the unfitness of the mother, the Supreme Court has ruled that the mere fact that the mother was a lesbian did not render her unfit as a parent. Thus,

It is therefore not enough for Crisanto to show merely that Joycelyn was a lesbian. He must demonstrate that she carried on her purported relationship with a person of the same sex in the presence of their son or under circumstances not conducive to the child's proper moral development. There is no evidence that the son was exposed to the mother's alleged sexual proclivities or that his proper moral and psychological development suffered as a result.

Courts are mandated to take into account all relevant circumstances that bear upon the children's well-being and development. Aside from material resources and moral and social situations of each parent, other factors may be considered among which are the *previous care and devotion shown by each parent; religious background, moral uprightness, home environment and time availability; the children's emotional and educational needs.*³⁵

F. Work, Profession and Business

One of the rights emphasized by CEDAW is the married woman's right to choose a profession and occupation.³⁶ GR No. 21 further states that "[e]ach partner must have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations ..."³⁷

It is interesting to observe how the norms have changed as regards this right. In the Civil Code, it was provided that,

Art. 117. The wife may exercise any profession or occupation or engage in business. However, the husband may object, provided:

- (1) His income is sufficient for the family, according to its social standing, and
- (2) His opposition is founded on serious and valid grounds.

In case of disagreement on this question, the parents and grandparents as well as the family council, if any, shall be consulted. If no agreement is still arrived at, the court will decide whatever may be proper and in the best interest of the family.³⁸

35. Pablo-Gualberto v. Gualberto V, 461 SCRA 450 (2005) (emphasis supplied).

36. CEDAW, art. 16 (g).

37. *Id.* GR No. 21.

38. CIVIL CODE, art. 117.

Clearly, what enjoyed primacy is the decision of the husband, while that of the wife can be overruled by the parents and grandparents, and the paramount interest to be considered is that of the family, despite the fact that it is the wife's profession or occupation that is being deliberated upon. Serious and valid grounds can be construed in the light of what duties or obligations are imposed on the wife under the law. Thus, since the management of the household has been solely imposed on the wife as both a right and a duty, the objection to pursue a profession may very well be due to the possibility that the same might interfere with her management of the household.

Fortunately, the above provision has been replaced by the Family Code which now provides that "either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other"³⁹ and that "the latter may object only on valid, serious, and moral grounds."⁴⁰ Furthermore, it is the court which shall decide whether the objection is proper or not in case of disagreement.⁴¹ Corollary to this, section 5 of the Anti-Violence Against Women and their Children Act of 2004⁴² provides:

Acts of Violence Against Women and Their Children. The crime of violence against women and their children is committed through any of the following acts:

- e) Attempting to compel or compelling the woman or her child to ... desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child.

This shall include, but not limited to,

- (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own

39. FAMILY CODE, art. 73.

40. *Id.*

41. *Id.*

42. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefore and for Other Purposes, Republic Act No. 9262 (2004).

money or properties, or solely controlling the conjugal or common money, or properties ...⁴³

It can be seen that from giving the husband the primary decision of whether or not the wife should pursue a profession or occupation, the present regime now considers the very act of refusing or preventing the wife from pursuing the same by the husband as possibly constituting violence against women which is punishable under the law.

G. Ownership, Acquisition and Administration of Property

CEDAW mandates under article 16 (h) that the country should guarantee "[t]he same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."⁴⁴

GR No. 21 explains that ownership, disposition, management and enjoyment of property are central to a woman's right to financial independence and in many countries are critical in her exercise of livelihood and in the provision of food and shelter for herself and her family.

Ownership of the community property has always been conferred by law to both spouses, whether in the Civil Code or the Family Code. However, under the former, there were properties which the wife could not acquire without the consent of the husband. Thus,

Art. 114. The wife cannot, without the husband's consent acquire any property by gratuitous title, except from her ascendants, descendants, parents-in-law, and collateral relatives within the fourth degree.

Art. 115. The wife manages the affairs of the household. She may purchase things necessary for the support of the family. She may borrow money for this purpose, if the husband fails to deliver the proper sum. The purchase of jewelry and precious objects is voidable, unless the transaction has been expressly or tacitly approved by the husband, or unless the price paid is from her paraphernal property.⁴⁵

The first article alludes to the protection of the wife's honor and reputation; and proscribes that she should avoid acts of generosity that may possibly put her under scrutiny or suspicion, or that may alienate the affection of her spouse. The second, however, flows from the fact that it is the husband who administers the community property and, therefore, a purchase of jewelry which is presumed to be luxurious or a non-necessity

43. *Id.* § 5 (e) ¶ 4.

44. CEDAW, art. 16 (h).

45. CIVIL CODE, arts. 114-15.

within the context of family expense should have the approval of the husband.

In the Family Code which provides for the system of absolute community of property as default property regime between the husband and the wife, the acquisition of a property through gratuitous title during the marriage by either spouse is now bestowed the character of a separate property of the grantee or donee, and thus, is excluded from the community property;⁴⁶ while jewelry purchased by either spouse is deemed to be part of the community property.⁴⁷ There is no longer any prohibition against these acquisitions by the wife.

More importantly, while in the Civil Code the administration of the property was vested in the husband⁴⁸ and the management of the household was the obligation of the wife,⁴⁹ the Family Code now recognizes that spouses should exercise joint administration over their properties. Articles 96 and 124 of the Code expressly direct that the administration and enjoyment of the community property or the conjugal partnership, respectively, shall belong to both spouses jointly.⁵⁰

This major change in the capacity of women to administer the community assets not only enables the wife to have equal status with her husband in the exercise of ownership, acquisition and administration of their joint properties, but also reinforces her right to independently pursue her own profession, occupation or business subject to the limitations provided by law. Further, she cannot, by herself, sue and be sued thereby lifting the restrictions on her capacity to act which was ingrained in the old code, where as a general rule, she must be joined by her husband in all suits either by or against her.⁵¹

46. FAMILY CODE, art. 92 (1).

47. *Id.* art. 92 (2).

48. CIVIL CODE, art. 112. Under the Civil Code, the husband is the administrator of the conjugal property. The wife may be administrator if there is a stipulation in the marriage settlements conferring the administration upon the wife or in other cases specifically provided in the Code.

49. *Id.* art. 115.

50. *See*, FAMILY CODE, arts. 96 & 124. Article 196 expressly provides that the administration and enjoyment of the community property shall belong to both spouses jointly. Article 124 provides that the same rule applies where the property regime between spouses is the conjugal partnership of gains.

51. CIVIL CODE, art. 113.

The husband must be joined in all suits by or against the wife, except:

- (1) When they are judicially separated;

While financial independence is vital to the achievement of substantive equality between men and women especially within family relations, it is also important to recognize non-financial contributions by one spouse or partner and consider this as deserving equal value as much as the actual properties contributed by the other. As GR No. 21 provides:

In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.⁵²

In the Family Code, the response to this concern has been focused on women and men who are in a non-marital relationship because it is where ownership of properties are not defined by provisions of a valid marriage and, therefore, could very well have been determined by who contributed financially at the time of the acquisition of the properties.

Hence, article 147 of the Family Code provides:

When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned

- (2) If they have in fact been separated for at least one year;
- (3) When there is a separation of property agreed upon in the marriage settlements;
- (4) If the administration of all the property in the marriage has been transferred to her, in accordance with articles 196 and 197;
- (5) When the litigation is between the husband and wife;
- (6) If the suit concerns her paraphernal property;
- (7) When the action is upon the civil liability arising from a criminal offense;
- (8) If the litigation is incidental to the profession, occupation or business in which she is engaged;
- (9) In any civil action referred to in Articles 25 to 35; and
- (10) In an action upon a quasi-delict.

In the cases mentioned in Nos. 7 to 10, the husband must be joined as a party defendant if the third paragraph of Article 163 is applicable.

52. CEDAW, GR No. 21, ¶ 32.

by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.⁵³

III. REMAINING CHALLENGES

So far, this article has shown a number of substantial changes in the Family Code which sought to address the inequality between women and men in family relations. However, there remain challenges for legislation and judicial decisions to continuously improve on the status of women and abolish discriminatory laws and pronouncements.

Article 2 of CEDAW provides:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women ...⁵⁴

The evident provisions of the Family Code which have not divested themselves of vestiges of patriarchy are the following:

Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, *the husband's decision shall prevail*, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

53. FAMILY CODE, art. 147 (emphasis supplied).

54. CEDAW, art. 2 (c) & (f).

Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the *husband's decision shall prevail*, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

...

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, *the father's decision shall prevail*, unless there is a judicial order to the contrary.

...

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, *the father's decision shall prevail*, unless there is a judicial order to the contrary.⁵⁵

A. A Question of Decision

The common factor in the above provisions is that, notwithstanding the fact that the woman has been vested with the administration of community property and parental authority jointly with her husband, once her decisions run counter to that of her husband, the law puts the burden on her to fight for her decision in court, a task which definitely could not only be daunting, but also disempowering on her part. The Code Commission through Justice Ricardo Puno admitted that they have "acceded to the clamor of the women, and ... have provided for joint authority in all these cases ..."⁵⁶ However, the Commission seems to view incidents of disagreement as isolated from the exercise of joint administration as a whole, stating

[b]ut supposing the husband says 'this land must be sold.' The wife says: 'No, this must not be sold.' But you have 10 or 15 other parcels of land. You go to court not to administer all these parcels of land. You go to court only to decide whether this particular parcel would be sold or not but the administrator remains joint with respect to the others ...⁵⁷

The problem with this view is that it tends to oversimplify and ignore the deeper underlying conditions why, in the first place, there was clamor not only for joint but equal exercise of administration of property and parental authority. While the women and men were socialized to believe that the status of women were subordinated to that of the men, this was at

55. FAMILY CODE, arts. 96, 124, 211 & 225.

56. MELENCIO STA. MARIA, PERSONS AND FAMILY RELATIONS LAW 442 (2004).

57. *Id.* (citing Deliberations on the Family Code).

the same time validated by a legal system which entrenched this inequality and subordination in the laws governing family relations, among others.

The new provisions are in response to the demand to have a paradigm shift in looking at the relations between husband and wife within the family, to empower women towards a more meaningful and egalitarian participation in decisions involving their marriage and the interest of their children. However, this goal is undermined with the extra burden imposed on women. Each act of taking their disagreement to court, if ever the woman gathers enough courage to actually fight it out in a legal proceeding, will definitely affect her future willingness to engage her husband in a similar manner and assert her own decisions in the exercise of parental authority and in the administration of the rest of their community property (or the so-called "10 or 15 other parcels of land"). The Code Commission should not have presumed that the woman can just continue to administer the rest of the properties with her husband without taking stock of her experience in questioning the latter's decision in court even as regards one property only. This single incident may verily have an impact of the woman's decision to go against her husband and take him to court the next time she has a contrary opinion, especially if she has suffered social reprobation because of it.

B. A Question of Choice

Another concern is the fact that some provisions have taken away from the woman the right to choose, either because it was deemed that this right is not important in such a situation or because the law has assumed a protective stance but in the process, has undermined the woman's ability to decide for herself and take responsibility for such choice.

As mentioned before, in the grounds for annulment of marriage, one form of fraud that was articulated in article 46 is the concealment of the wife that she was pregnant caused by another man at the time of the marriage.⁵⁸ In a reversal of role where the man is the one who has impregnated another woman, the concealment which has become the indicia of fraud in all the other analogous cases becomes insignificant, and therefore, the woman is not given a choice to annul her marriage to a man who has fathered someone else's child at the time of their marriage.

In void marriages, the Family Code states that a marriage is void if the authority of the solemnizing officer is absent, unless one of the parties in good faith believed that said officer at the time of the marriage had

58. FAMILY CODE, art. 46.

authority.⁵⁹ Again the Code Commission has provided for the rationale of this exception. It stated that the law seeks "to prevent unscrupulous chauvinistic males from deceiving the girls, because they were made to believe that they are going to be married when marriage is not what they want ..."⁶⁰ In this case, the law has taken upon itself to decide for the woman whether or not she would still want to be married to someone who, in the first place, has taken efforts to deceive her just so he can escape from being legally bound in marriage to her. In reality, this does not protect women but subverts their choice and reduces them to human beings who are not capable of exercising rational agency on matters which are extremely important to their future.

As to the question of paternity, the law only gives the father the right to impugn the legitimacy of the child. Neither the child nor the mother of said child is granted such right in the Family Code.⁶¹ Although there is merit in the argument that it is for the best interest of the child, it may not be so in all cases especially if the father does not choose to impugn, even though his decision not to exercise this right is to ensure that he retains parental authority over a child, who he actually loathes, to the exclusion of the biological father and in a preferential character over the mother. The law should allow for exceptions especially since the periods for impugning legitimacy are quite short and restrictive.⁶² The law should not give over importance to legitimacy in exchange for the possibility of the child being afforded the right to the care and support of his or her biological father. Likewise, the mother should be able to exercise this right if it is for the best interest of her child. If the importance accorded to legitimacy is because the child stands to benefit more from the law if he or she is recognized as legitimate, then the law should address the discriminatory provisions that put illegitimate children at a disadvantage, instead of depriving the child or the mother to assert a status that may yet be more beneficial to the child in certain cases.

59. *Id.* art. 35 (2) ("Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so.").

60. Justice Caguioa, *Deliberations on the Family Code in the Senate Committee on Women and Family Relation* (Jan. 27, 1988) cited in STA. MARIA, *supra* note 56, at 188.

61. *See*, FAMILY CODE, art. 170.

62. *Id.*

In *Concepcion v. Court of Appeals*,⁶³ the petitioner and private respondent were married and almost a year later, respondent gave birth to a son. Later, petitioner filed an annulment case against respondent on the ground of bigamy because respondent's husband was still alive at the time their marriage was contracted. In a legal battle where respondent was claiming the right for the child to use her surname and the petitioner for visitation rights, the Court held that the presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of illegitimacy. Aside from the virtue of the mother, the Court further said that:

[f]or reasons of public decency and morality, a married woman *cannot say* that she had no intercourse with her husband and that her offspring is illegitimate. The proscription is in consonance with the presumption in favor of family solidarity. It also promotes the intention of the law to lean toward the legitimacy of children.⁶⁴

Such pronouncements against what women can or cannot do are defeatists and incapacitating, especially given the circumstance of this case where it was apparent that the recognized father under the law had never spent time with his supposed child, because he was no longer living with respondent at the time she gave birth. That the actual issues being advanced in the petition by the natural parents were the use of the mother's surname and the visitatorial rights of the father is testament to the fact that the said recognized father by law has been out of the picture for quite some time. While it may be said that the Supreme Court had no choice but to apply the law, it could have made its pronouncement without emphasizing the woman's lack of choice on the matter. This has a very disempowering effect for women whose role and importance within the family should not be dismissed in such a nonchalant manner.

IV. THE CONTINUED STRUGGLE FOR GENDER EQUALITY

This Article has illustrated definite improvements on the laws pertaining to women in marriage and family relations. It has also pointed out areas in family law which need further work to achieve gender equality. The CEDAW Committee in its Concluding Comments on the Philippine country report has mentioned its concern at "the lack of progress" in undertaking and completing necessary revisions of discriminatory provisions in national legislation and in enacting a comprehensive legal framework

63. *Concepcion v. Court of Appeals*, 468 SCRA 438 (2005).

64. *Id.* at 452 (emphasis supplied).

pertaining to gender equality."⁶⁵ In working towards a more non-discriminatory family law, our obligations under the CEDAW should always be taken into consideration, bearing in mind that when one talks about gender equality between men and women, it does not mean equal treatment because women and men are different. Therefore, there should be differentiation in their treatment but at the same time ensuring that in the end, they will receive equal opportunity and benefits.

In a broad and generalized sense, women's experiences have been different from men; they have had more history of exclusion and prohibition in law and in fact. There should be heightened sensitivity to gender differences if changes in the laws are expected to produce the desired effect of substantive equality. Lawmakers should be keen in taking in women's experiences and how these have shaped their gender identity within the family, community and the society. Non-discrimination, which is the overarching theme of all the human rights treaties that the country has signed and ratified, does not mean turning a blind eye on the differences between women and men and using at all times identical standards or benchmarks for the protection, promotion and fulfillment of rights guaranteed to both men and women. On the contrary, non-discrimination means accommodating and addressing such differences in order to achieve a social order where both women and men are enabled and capacitated to realize and enjoy their human rights. In the words of Aristotle, who has captured both the formal and substantive approach to equality, "like cases should be treated alike, unlike cases should be treated unlike in proportion to their unlikeness."⁶⁶

65. CONCLUDING COMMENTS OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN: PHILIPPINES, Aug. 25, 2006.

66. Titia Loenen, *Rethinking Sex Equality as a Human Right*, 12 NETHERLANDS QUARTERLY OF HUMAN RIGHTS 253-70 (1994).